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SENATE BILL 2806

By Rochelle

AN ACT to amend Tennessee Code Annotated, Section 47-1-201(38), relative to the definition of security interest.

WHEREAS, the Tennessee General Assembly adopted revised UCC Article 9 effective July 1, 2001 (Public Chapter 846, Acts of 2000);

WHEREAS, adoption of Revised Article 9 included certain conforming amendments recommended by the National Commissioners on Uniform State Laws including a revision to the definition of security interest in then Section 47-1-201(37);

WHEREAS, the definition of security interest was previously expanded during the adoption of Article 2(A) on leases (Public Chapter 398, Acts of 1993), to provide a basis to distinguish true leases from security interest; and

WHEREAS, the language added during the adoption of Article 2(A) was inadvertently deleted during the adoption of Revised Article 9; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 47-1-201(38), is amended by designating the existing language as subitem (A) and by adding the following:

(B) Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest if the

consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and

(a) the original term of the lease is equal to, or greater than, the remaining economic life of the goods,

(b) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods,

(c) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement, or

(d) the lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement,

(C) A transaction does not create a security interest merely because it provides that:

(a) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to, or is greater than, the fair market value of the goods at the time the lease is entered into,

(b) the lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service of maintenance costs with respect to the goods,

(c) the lessee has an option to renew the lease or to become the owner of the goods,

(d) the lessee has an option to renew the lease for a fixed rent that is equal to, or greater than, the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed, or

(e) the lessee has an option to become the owner of the goods for a fixed price that is equal to, or greater than, the reasonably predicable fair market value of the goods at the time the option is to be performed.

(D) For purposes of this subsection (38):

(a) Additional consideration is not nominal if (i) when the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or (ii) when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;

(b) "Reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and

(c) "Present value" means the amount as of a date certain of one (1) or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

SECTION 2. It is the legislative intent in making this correction that Tennessee Code Annotated, Section 47-1-201(38), as amended by this amendment, apply to transactions entered into between July 1, 2001 and the effective date of this amendment, as well as to transactions entered into on or after such effective date.

SECTION 3. This act shall take effect upon becoming a law, the public welfare

requiring it.